

Federal Deposit Insurance Corporation

§ 335.513

(Signature)

(Name and Title)

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

[46 FR 25208, May 5, 1981, as amended at 48 FR 55564, Dec. 14, 1983; 54 FR 53593, Dec. 29, 1989]

**§ 335.513 Solicitation/recommendation statement to be filed under section 14(d)(4) of the Securities Exchange Act of 1934 (Form F-12).**

Federal Deposit Insurance Corporation  
Washington, DC 20429

FORM F-12—SOLICITATION/RECOMMENDATION  
STATEMENT UNDER SECTION 14(d)(4) OF THE  
SECURITIES EXCHANGE ACT OF 1934

(Amendment No. ———)

(Name of Subject Bank)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

((CUSIP) Number of Class of Securities)

(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement)

Instruction: Three copies of this statement, including all exhibits, should be filed with the FDIC.

GENERAL INSTRUCTION

A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be considered filed with the FDIC for purposes of the Act.

*Item 1—Security and Subject Bank*

State the title of the class of equity securities to which this statement relates and the name and the address of the principal office of the subject bank.

*Item 2—Tender Offer of the Bidder*

Identify the tender offer to which this statement relates, the name of the bidder and the address of its principal executive offices or, if the bidder is a natural person, the bidder's residence or business address (which may be based on the bidder's Form F-13) (§ 335.512) filed with the FDIC.

*Item 3—Identity and Background*

(a) State the name and business address of the person filing this statement.

(b) If material, describe any contract, agreement, arrangement or understanding and any actual or potential conflict of interest between the person filing this statement or its affiliates and: (1) The subject bank, its principal officers, directors or affiliates; or (2) the bidder, its executive officers, directors or affiliates.

*Instruction*

If the person filing this statement is the subject bank and if the materiality requirement of item 3(b) is applicable to any contract, agreement, arrangement or understanding between the subject bank or any affiliate of the subject bank and any principal officer or director of the subject bank, it shall not be necessary to include a description thereof in this statement, or in any solicitation or recommendation published, sent or given to security holders if substantially similar information has been disclosed in any proxy statement, report or other communication sent within one year of the filing date of this statement by the subject bank to the then holders of the securities and has been filed with the FDIC: *Provided* That this

statement and the solicitation or recommendation published, sent or given to security holders shall contain specific reference to the proxy statement, report or other communication and that a copy of the pertinent portion(s) thereof is filed as an exhibit to this statement.

*Item 4—The Solicitation or Recommendation*

(a) State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the person filing this statement is advising security holders of the securities being sought by the bidder to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, furnish a description of such other action being recommended. If the person filing this statement is the subject bank and a recommendation is not being made, state whether the subject bank is either expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) State the reason(s) for the position (including the inability to take a position) stated in (a) of this item.

*Instruction*

Conclusory statements such as "The tender offer is in the best interest of shareholders," will not be considered sufficient disclosure in response to item 4(b).

*Item 5—Persons Retained, Employed or to be Compensated*

Identify any person or class of persons employed, retained or to be compensated by the person filing this statement or by any person on its behalf, to make solicitation or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

*Item 6—Recent Transactions and Intent with Respect to Securities*

(a) Describe any transaction in the securities referred to in item 1 which was effected during the past 60 days by the person(s) named in response to item 3(a) and by any executive officer, director, affiliate or subsidiary of such person(s).

(b) To the extent known by the person filing this statement, state whether the persons referred to in item 6(a) presently intend to tender to the bidder, sell or hold securities of the class of securities being sought by the bidder which are held of record or beneficially owned by such persons.

*Item 7—Certain Negotiations and Transactions by the Subject Bank*

(a) If the person filing this statement is the subject bank, state whether or not any negotiation is being undertaken or is under-

way by the subject bank in response to the tender offer which relates or would result in:

(1) An extraordinary transaction such as a merger or reorganization, involving the subject bank or any subsidiary of the subject bank;

(2) A purchase, sale or transfer of a material amount of assets by the subject bank or any subsidiary of the subject bank;

(3) A tender offer for or other acquisition of securities by or of the subject bank; or

(4) Any material change in the present capitalization or dividend policy of the subject bank.

*Instruction*

If no agreement in principle had yet been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject bank disclosure would jeopardize continuation of the negotiations. In that event, disclosure that negotiations are being undertaken or are underway and are in a preliminary stage will be sufficient.

(b) Describe any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer, other than one described in item 3(b) of this statement, which relates to or would result in one or more of the matters listed in item 7(a) (1), (2), (3) or (4).

*Item 8—Additional Information to be Furnished*

Furnish any additional information necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

*Item 9—Material to be Filed as Exhibits*

Furnish a copy of:

(a) Any written solicitation or recommendation which is published or sent or given to security holders in connection with the solicitation or recommendation referred to in item 4.

(b) Any written instruction, or other material which is furnished to persons making any actual oral solicitation or recommendation for their use, directly or indirectly, in connection with the solicitation or recommendation.

(c) Any contract, agreement, arrangement or understanding described in item 3(b) or the pertinent portion(s) of any proxy statement, report or other communication referred to in item 3(b).

*Signature*

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

## Federal Deposit Insurance Corporation

## § 335.530

(Date)

(Signature)

(Name and Title)

### *Instruction*

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer of a corporation or a general partner of a partnership), evidence of the representative's authority to sign on behalf of that person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

[46 FR 25208, May 5, 1981, as amended at 54 FR 53593, Dec. 29, 1989]

### **§ 335.520 Purchase of securities by the bank and others.**

When a person other than the issuing bank or any person described in section 13(e)(2) of the Act makes a tender offer for, or request or invitation for tenders of, any class of equity securities of a bank subject to section 13(e) of the Act, and such person has filed a statement with the FDIC under subpart E and the issuing bank has received notice thereof, such issuing bank or any person described in section 13(e)(2) of the Act shall not thereafter, during the period such tender offer, request or invitation continues, purchase any equity securities of the issuing bank unless:

(a) The issuing bank or any person described in section 13(e)(2) of the Act has filed with the FDIC a statement containing the information specified below with respect to proposed purchases:

(1) The title and amount of securities to be purchased, the names of the persons or classes of persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(2) The purpose for which the purchase is to be made and any plan or proposal for the disposition of such securities; and

(3) The source and amount of funds or other consideration used or to be used in making the purchases, and, if any

part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto.

(b) The issuing bank or any person described in section 13(e)(2) of the Act has at any time within the past six months sent or given to the equity security holders of the issuing bank the substance of the information contained in the statement required by § 335.520(a).

### **§ 335.521 Tender offers by issuers.**

A bank or its affiliates shall not make an "issuer tender offer" unless the offer meets the requirements of 17 CFR 240.13e-4, except that all filings shall be made with the FDIC and be titled with the name of the FDIC instead of the Securities and Exchange Commission.

[54 FR 53593, Dec. 29, 1989]

### **§ 335.530 Change in majority of directors.**

If, under any arrangement or understanding with the person or persons acquiring securities in a transaction subject to section 13(d) or section 14(d) of the Act, any persons are to be elected or designated as directors of the bank, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the bank, then, not less than 10 days prior to the date any such person takes office as a director, or such shorter period prior to that date as the FDIC may authorize upon a showing of good cause therefor, the bank shall file with the FDIC and transmit to all holders of record of securities of the bank who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by items 5 (a), (d), (e), and (f), 6 and 7 of Form F-5 to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.